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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   UNITED STATES OF AMERICA,

11                   Plaintiff,

12                   v.

13                   DALE ALEXANDER PRENTICE, et al.,

14                   Defendants.

CASE NO. CR06-296C

ORDER

15                   This matter comes before the Court on Defendant Visa El's Motion to Suppress (Dkt. No. 153),  
16 Defendant Ibrahim Abdul El's joinder therein (Dkt. No. 154), Defendant Hao Quang Tran's Motion to  
17 Suppress (Dkt. No. 155), and the Government's Opposition to these motions (Dkt. No. 162). Having  
18 reviewed the papers on the motions and the parties having waived a hearing on this matter, the Court  
19 hereby finds and rules as follows.

20 **I. FACTS**

21                   The following facts are summarized from the Government's expected evidence as presented by all  
22 parties. In March 2006, an individual seeking to rent a warehouse that could accommodate a tractor-  
23 trailer contacted an informant, who then met with Dale Prentice—a Defendant in this action but not a  
24 movant here—to arrange the rental. The informant and Prentice met on May 26, 2006 to discuss this

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1 arrangement again. Prentice did not want his names on any paperwork for the warehouse and wanted the  
2 informant to set up the rental and give him the keys. Prentice said that a large amount of money would  
3 be involved for him and the informant if the rental was successful, and promised \$8,000 to \$10,000 per  
4 month to the informant.

5 On June 12, 2006, Immigration and Customs Enforcement ("ICE") agent Jay Ingersoll met with  
6 Prentice, posing as someone who would sign a lease for the warehouse in the name of his construction  
7 business in exchange for \$160,000 in U.S. currency for the rental cost. Prentice informed Ingersoll that,  
8 with the addition of Ingersoll and others to the plan, the fee promised the informant would have to be  
9 split up between them. Prentice further said that he could pay Ingersoll \$20,000 up front, rather than the  
10 \$48,000 Ingersoll had requested, and that he could pay the rest in approximately three months, when he  
11 and his organization started making money. Prentice assured Ingersoll that his "company" name would  
12 not be used on any paperwork other than the lease. The two then discussed the specifics of the  
13 warehouse configuration and whether there would be windows on the doors. When asked by Ingersoll  
14 whether anything hazardous would be brought into or stored in the warehouse, Prentice said no, and  
15 assured Ingersoll that nothing would be stored there at all. Rather, the use would be that a food truck  
16 would back in, be "broken down" and then they would remove their "stuff" and the truck would leave the  
17 warehouse. The two discussed the amount of cash that Prentice would be leaving with Ingersoll that day.  
18 Prentice said he was giving Ingersoll three "fifty packs" (\$50,000 each) and a "ten pack" (\$10,000),  
19 equaling the \$160,000 needed for renting the warehouse. This money (final count equaling \$160,100)  
20 was deposited in the bank, and Ingersoll signed a one-year lease for \$85,000 for the warehouse at 12315  
21 Mukilteo Speedway in Mukilteo, Washington.

22 On June 13, 2006, Ingersoll met with Prentice to deliver the keys and receive his fee for using his  
23 "company" name on the warehouse lease. Prentice offered \$60,000 to split among the people who  
24 helped get the warehouse and said that his "money guy" in California had given him \$20,000 to deliver  
25 that day. He also said that his organization would not be using the warehouse that often—two to three  
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1 times per week—and that they always would be there during daytime hours. Again, he said they would  
2 back the truck in, close the door, unload for a few hours, and then leave, and that nothing would be  
3 stored there to his knowledge. Prentice went to get a bag but, according to Ingersoll, returned nervous  
4 and sweaty. Apparently, Prentice had seen firefighters inside the store and thought they were police  
5 officers because police officers in Canada dress similarly to firefighters in the United States.

6 On June 14, 2006, a tractor-trailer semi-truck arrived at the warehouse, having crossed the United  
7 States–Canada border at 8:57 that morning. The semi backed in, dropped off the trailer, and then  
8 departed. Michael Britton, also a Defendant in this matter, was at the warehouse at the time and opened  
9 the door. He has not been seen since June 27, 2006.

10 On June 15, 2006, beginning at 9:23 a.m., Britton drove six different cars and passenger trucks to  
11 the warehouse. The first was not driven into the warehouse, but Britton loaded something into the rear  
12 of the vehicle. Britton drove the other five vehicles into the southern bay of the warehouse and closed  
13 the door. Each car was in the warehouse for approximately six minutes. Britton drove each one away,  
14 returning with another. Britton drove the last car away at 2:25 p.m. Agents watched a film of these  
15 events after the fact.

16 On June 16, 2006, a Canadian-licensed semi without a trailer drove into the warehouse lot at 6:15  
17 p.m. after having crossed the United States–Canada border at 12:30 p.m. that day. At about 6:45 p.m.,  
18 Britton opened the south-facing door, the semi backed in, and departed pulling the same trailer that had  
19 been left there two days prior. Britton closed the door and drove away.

20 On June 21, 2006 around 12:00 p.m., a different Canadian-licensed tractor-trailer arrived at the  
21 warehouse, pulled in, and left the trailer inside, leaving at 12:22 p.m. Britton was there and had opened  
22 the door for the tractor-trailer to enter. Between 8:15 p.m. and 12:30 a.m. the morning of June 22, 2006,  
23 eight different vehicles entered and left the warehouse. They were all driven by Britton. Each was in the  
24 warehouse for five to ten minutes. Agents followed, but did not stop or search these vehicles. They did,  
25 however, identify one of the vehicles' owners as Phuoc V. Nguyen, who had been arrested on December  
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1 18, 2001 while attempting to pick up approximately 350 pounds of marijuana and was convicted in  
2 Oregon. Britton drove one of the cars to the side door of the warehouse instead of inside. He then  
3 loaded two large Canadian hockey bags into the trunk. The ICE agents suspected that these Canadian  
4 hockey bags, without accompanying hockey players, contained marijuana. Britton also handled a smaller  
5 bag, but agents could not tell whether it came from inside or went into the warehouse. Agents then  
6 watched Britton leave the warehouse several times in different vehicles, returning each of them to a  
7 different person.

8 On June 23, 2006, agents requested a "sneak and peek" warrant, which acknowledged that agents  
9 did not know what was being smuggled into the United States or distributed from the warehouse, but  
10 stated that Prentice was suspected of money and marijuana smuggling. On June 24, 2006, agents  
11 executed the warrant at the warehouse, finding metal and plywood in eight-foot square sheets, tools,  
12 including saws and grinders, pry bars, hammers, metal chisels, protective goggles, and earplugs. There  
13 was a scrap of paper in the garbage that said "Green 80," which the agents apparently suspected signaled  
14 a grade or type of marijuana. Agents believed that the sheets of plywood and metal had been pulled off  
15 of the walls of the containers on trailers brought into the warehouse. These containers were old  
16 refrigerated shipping containers that had crossed the border appearing empty. Because they were empty,  
17 they were not searched. Agents suspected after their surreptitious search that the organization was  
18 replacing insulating material in the walls of the refrigerated shipping containers with contraband, likely  
19 marijuana, and then removing it in the warehouse. Border records indicated that Britton had crossed into  
20 the United States on June 13, 2006 and June 21, 2006.

21 On June 27, 2006, another Canadian-licensed tractor-trailer brought a new trailer and took away  
22 the one that had been at the warehouse since June 21, 2006. Agents saw Britton and his car at the  
23 warehouse that afternoon. Around 5:50 p.m. Britton drove away in his own car after spending a couple  
24 of hours in the warehouse. Around 6:35 p.m. he returned, driving Defendant Visa El's car, a Montero.  
25 This was the first of seven cars that Britton ferried to and from the warehouse that night.

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1 Agents had seen Britton pick up the car from Defendant El at the Alderwood Mall in Lynnwood,  
2 Washington. Britton drove the car into the warehouse, left after seven minutes, returned to Alderwood  
3 Mall, and returned the keys to Defendant Visa El. Defendant Visa El and his nephew Defendant Ibrahim  
4 Abdul El then entered the vehicle and drove away. The police and Washington State Patrol stopped the  
5 car shortly thereafter. A police dog apparently reacted positively to an odor in the car and the two were  
6 arrested and removed from the car.<sup>1</sup> Ninety-nine pounds of marijuana were found in six plastic garbage  
7 bags in the car's rear. Defendants Visa El and Ibrahim Abdul El were booked into the Bellevue Police  
8 Department and later released pending further investigation.

9 Defendant Hao Quang Tran's Ford Mustang was the fifth of the seven cars driven to and from the  
10 warehouse by Britton and later stopped and searched on June 27, 2006. Britton loaded Defendant Tran's  
11 car around 9:20 p.m. at the warehouse and returned it to him at a McDonald's restaurant at the  
12 Alderwood Mall before 10:00 p.m. At that time, Defendant Tran and another Defendant in this matter,  
13 Tam Phu Quy Nguyen, got into the Mustang and drove it to an apartment complex in Tukwila,  
14 Washington. The car was followed and stopped by law enforcement as it entered the parking lot at the  
15 apartment complex. Both Defendants Nguyen and Tran were arrested and booked into the Renton Police  
16 Department. Police searched the trunk of the vehicle and found four bags of marijuana.

17 After the stops and searches of all seven cars that were driven by Britton from the warehouse on  
18 June 27, 2006, it was apparent that each car had between fifty and one hundred pounds of marijuana,  
19 packaged in large plastic garbage bags spray-painted different colors. No person other than Britton was  
20 seen at the warehouse.

21 Agents obtained a warrant to search the warehouse on July 11, 2006. In their request and  
22 affidavit, they described the purpose of the stops made on June 27, 2006 as to "confirm that marijuana

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24 <sup>1</sup> Defendant Visa El's motion orders the facts this way. However, Defendant Ibrahim Abdul El's  
25 motion claims that the police dog did not react to the odor until *after* they were arrested and removed  
from the car. The Court addresses the irrelevance of this factual discrepancy *infra* section II.A.

1 was being dealt out of the warehouse, to determine the amount, and to learn the identity of the  
2 customers."

3 On July 13, 2006, agents wrote the report on their June 24, 2006 surreptitious search of the  
4 warehouse. The report acknowledged that execution of the warrant had helped them identify the method  
5 of smuggling used by the organization that they had been watching—replacing refrigerator container  
6 insulation with marijuana so that the container would appear empty at the border.

7 Defendants Visa El and Ibrahim Abdul El move to suppress the evidence seized from Visa El's  
8 Montero on June 27, 2006 on the basis that there was no reasonable suspicion for law enforcement to  
9 make the stop. Defendant Hao Quang Tran moves to suppress the evidence seized from his Ford  
10 Mustang on June 27, 2006 on the basis that there was no probable cause to search, and even if probable  
11 cause existed, a warrant was required to search the trunk.

## 12 II. ANALYSIS

13 The Fourth Amendment of the United States Constitution requires stops, arrests, and searches to  
14 be reasonable. Evidence obtained as a result of an illegal stop, arrest, or search must be suppressed as  
15 fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963).

### 16 A. The Montero

17 Defendants Visa El and Ibrahim Abdul El argue that there was no reasonable suspicion justifying  
18 the police stop of the Montero. The Government argues that there was not only reasonable suspicion to  
19 stop, but also probable cause to arrest and search. The Court agrees with the Government.

20 Under *Terry v. Ohio*, 392 U.S. 1 (1968), law enforcement officers must have at least a reasonable  
21 suspicion of criminal activity before stopping a suspect. *United States v. Morales*, 252 F.3d 1070, 1073  
22 (9th Cir. 2001). “Reasonable suspicion requires specific, articulable facts which, together with ‘objective  
23 and reasonable’ inferences, form a basis for suspecting that a particular person is engaged in criminal  
24 conduct.” *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000). This is a fact-intensive inquiry  
25 that must evaluate the “totality of the circumstances.” *United States v. Montero-Camargo*, 208 F.3d

1 1122, 1129 (9th Cir. 2000).

2 In contrast, warrantless arrests and searches require probable cause. *See United States v. Martin*,  
3 509 F.2d 1211, 1213 (9th Cir. 1975) (warrantless arrests); *United States v. Baker*, 567 F.2d 924, 926–27  
4 (9th Cir. 1978) (searches incident to arrests); *United States v. Pinela-Hernandez*, 262 F.3d 974, 978 (9th  
5 Cir. 2001) (warrantless searches of automobiles). The probable cause inquiry is more exacting than the  
6 test for reasonable suspicion. *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *United States v.*  
7 *Montoya de Hernandez*, 473 U.S. 531, 541, 544 (1985)). Probable cause requires a finding that there  
8 exists a “fair probability that contraband or evidence of a crime will be found in a particular place,”  
9 *Illinois v. Gates*, 462 U.S. 213, 238 (1983), or information “sufficient to warrant a prudent [person’s  
10 belief] that the [arrested person] had committed or was committing an offense,” *Beck v. Ohio*, 379 U.S.  
11 89, 91 (1964). While the standards themselves are different, the probable cause test—like the reasonable  
12 suspicion test—is dependent on an evaluation of the “totality of the circumstances.” *Gates*, 462 U.S. at  
13 238. Previous surveillance indicating that a vehicle may contain contraband constitutes probable cause.  
14 See, e.g., *Pinela-Hernandez*, 262 F.3d at 978–79.

15 Defendants Visa El and Ibrahim Abdul El argue that no reasonable suspicion existed to stop their  
16 car because they were not at the warehouse. However, the surveillance had indicated quite clearly that  
17 the pattern involved in transferring material from the warehouse to individual cars was that only Britton  
18 would drive cars to the warehouse, stay inside for five to ten minutes, and then deliver the vehicles to  
19 parties waiting elsewhere. This procedure occurred repeatedly. In addition, agents knew that large  
20 amounts of cash coming from a “money guy” in California were associated with people having access to  
21 the warehouse; agents had seen Britton loading Canadian hockey bags from the warehouse into one car  
22 (apparently signaling marijuana); agents had observed Britton engage in the same pattern of loading cars  
23 on June 15, 2006, June 21, 2006, and June 27, 2006 when the vehicles involved were finally stopped after  
24 Britton delivered them to others; and agents identified one vehicle transferee on June 21, 2006 as a  
25 convicted marijuana trafficker (Phuoc V. Nguyen). Moreover, while agents did not discover marijuana in  
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1 their June 23, 2006 “sneak and peek” search, they found tools and materials suspected of aiding  
2 contraband concealment and a piece of paper with the words “Green 80” (apparently indicating to them  
3 marijuana was likely the reference). Agents also knew the tractor-trailers coming and going to the  
4 warehouse were Canadian-licensed, which could signal cross-border drug trafficking. Most importantly,  
5 agents observed Britton hand over the keys to Defendant Visa El at the Alderwood Mall. Perhaps none  
6 of these facts individually could support probable cause or even reasonable suspicion, but when  
7 combined—*i.e.*, when considered in the totality of the circumstances—they constitute both. The stop  
8 was justified by probable cause (and accordingly reasonable suspicion); the arrest and search were  
9 justified by probable cause.

10 Both Defendants Visa El and Ibrahim Abdul El point to the use of the police dog after they were  
11 stopped as evidence that reasonable suspicion was lacking. This fact cannot, however, negate the  
12 probable cause that existed before the vehicle was ever stopped and before a police dog could have  
13 approached the car. Accordingly, the police dog merely confirmed what the officers already suspected  
14 and identified the object of the previously obtained probable cause. Finally, Defendant Ibrahim Abdul  
15 El’s contention that the police dog did not react to the odor until after they were arrested is also  
16 irrelevant. Because there was probable cause to arrest the two at the time the stop was made, the use of  
17 a police dog thereafter cannot be said to invalidate the arrest.

18 For the foregoing reasons, Defendants Visa El and Ibrahim Abdul El’s motions to suppress the  
19 marijuana seized from the Montero are DENIED.

20       **B. The Mustang**

21 Defendant Hao Quang Tran argues that (1) the search of the trunk of his Mustang was not  
22 supported by probable cause and (2) even if probable cause existed, a warrant was required prior to the  
23 search because this situation does not fit the “automobile exception” to the warrant requirement. The  
24 Government disputes this, arguing that probable cause was abundant and that the search of the trunk did  
25 not require a warrant. The Court agrees with the Government.

1       The probable cause standard is recited *supra*. With respect to the challenged trunk search here,  
2 the following additional law is relevant. The Ninth Circuit has noted that the “Supreme Court has held  
3 that police may conduct a warrantless search of a vehicle if they have probable cause to believe that it  
4 contains contraband.” *Pinela-Hernandez*, 262 F.3d at 977–78 (citing *Carroll v. United States*, 267 U.S.  
5 132 (1925); *United States v. Ross*, 456 U.S. 798, 799 (1982)). This constitutes the “automobile  
6 exception” to the warrant requirement. *Id.* Moreover, “[i]f probable cause justifies the search of a  
7 lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may  
8 conceal the object of the search.” *Ross*, 456 U.S. at 825. Relying on *Ross*, the *Pinela-Hernandez* court  
9 held that “[b]ecause there was probable cause to search the car, there was probable cause to open the  
10 trunk and to search the packages that turned out to contain marijuana.” 262 F.3d at 979. Accordingly, if  
11 probable cause existed to search the Mustang, probable cause existed to search the trunk without a  
12 warrant.

13       The same chain of events and “totality of the circumstances” relevant with respect to the stop of  
14 the Montero are relevant as to the Mustang. Thus, for the same reasons that the Court found probable  
15 cause to stop and search the Montero, the Court finds that there was probable cause to stop and search  
16 the Mustang. The Montero was the first car Britton loaded with marijuana on June 27, 2006; the  
17 Mustang was the fifth. The stop of the Montero occurred first. Accordingly, an additional fact justified  
18 the subsequent stop and search of the Mustang: the ninety-nine pounds of marijuana found in the  
19 Montero. When police stopped the Mustang, they not only suspected that marijuana had been loaded  
20 from the warehouse into the cars Britton drove (as when they stopped the Montero), they now knew it.  
21 Therefore, agents had additional probable cause to stop Defendant Tran and search the Mustang.  
22 Defendant Tran’s argument that some additional showing was required to search the trunk is meritless.

23       For the foregoing reasons, Defendant Hao Quant Tran’s Motion to Suppress the marijuana seized  
24 from the Mustang is DENIED.

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### III. CONCLUSION

Defendants' motions are DENIED in their entireties and the seized evidence may be used at trial.

SO ORDERED this 24<sup>th</sup> day of January, 2007.

Joh C Coyle

John C. Coughenour

## United States District Judge